



found narcotics. As the Troopers were placing the occupants under arrest, the individual who had been in the back seat ran from the scene. He crossed six lanes of traffic and got into a car that was traveling southbound on I-95. The identity of that individual was not known to the Troopers. The driver was identified as Robert Davis ("Davis"), and the front-seat passenger was identified as Clinton Cox ("Clinton Cox"), of Milford Connecticut. These two individuals were arrested and taken into custody.

The following day, an investigator from the New York State Police, Michael McAdory ("McAdory") began an investigation. He spoke to the Troopers involved in the traffic stop. They described the suspect who fled as a black male, approximately 6'1" tall, 200 pounds, a stocky build, and clean shaven. McAdory also interviewed Davis, the driver. He told McAdory that the person who fled was Norman Jones, of New Haven, Connecticut. McAdory then contacted the police departments in Milford, Stratford and New Haven Connecticut, for information that could lead to identification of the suspect. He asked these police departments if they had any information about individuals who were known to associate with Clinton Cox. A detective in the Milford police department suggested that the suspect could be Jason Cox, and he sent McAdory a picture of Cox.

After McAdory received Cox's picture, he contacted the

Bridgeport, Connecticut police for assistance in preparing a photo array that would include Cox's picture and other African-American men of the same age and with the same facial characteristics. The photo array that was prepared in response to this request was composed of frontal mug shots of eight African-American men, all of whom were approximately the same age, all had moustaches and close-cropped hair with receding hairlines, and they all appeared to have a stocky build. One of the pictures was of Cox.

This photo array was shown to the Troopers on October 27, 1999. All three identified the picture of Cox as the individual who had fled the traffic stop on October 9, 1999. The Troopers were shown the array outside the presence of each other and with only Officer McAdory in the room. McAdory made no indication or suggestion to them as to the individual they should select. Before he showed them the array, he informed them that it might or might not contain a picture of the subject, that they should keep in mind that hair styles, beards and moustaches could be easily changed, and that pictures might not always depict the true complexion of the person. The Troopers did not discuss the array or the identification with one another before they were shown the array.

None of the Troopers saw the picture of Cox that McAdory received from the Milford police before they saw the array.

McAdory kept the picture in an envelope in his case file and the Troopers did not have access to the file or to McAdory's desk. McAdory did not tell the Troopers that he had received a picture from the Milford police of a suspect or that a photo array was being prepared by the Bridgeport police.

#### DISCUSSION

Cox moves to suppress evidence of the photo identification on the grounds that the identification procedure was unnecessarily and impermissibly suggestive and thus violated his constitutional rights. He contends that the process was irreparably tainted by McAdory's receipt of Cox's picture before the photo array was prepared. He also maintains that the Troopers' identifications were unreliable based on their lack of opportunity to view the suspect at the time of the traffic stop, the vague description they provided of the suspect at the time of the stop, the lapse of time between the stop and the identification, and the lack of other evidence showing that Cox was present at the traffic stop. Contrary to Cox's claims, the court does not find that the identification process was unnecessarily suggestive or tainted in any way. Moreover, his claims as to the unreliability of the identification go to the weight of the evidence, not its admissibility. See, e.g., Jarrett v. Headley, 802 F.2d 34, 42 (2d Cir. 1986).

"A defendant's right to due process includes the right not

to be victimized by suggestive police identification procedures, including suggestive displays of photographs." United States v. Rosa, 11 F.3d 315, 330 (2d Cir. 1993). A pre-trial identification should be suppressed if the procedure that produced it was "so unnecessarily suggestive and conducive to irreparable mistaken identification." United States v. Bautista, 23 F.3d 726, 729 (2d Cir. 1994) (quoting Stovall v. Denno, 388 U.S. 293, 302 (1967)). If the procedure was not unnecessarily suggestive, the identification is admissible under Fed. R. Evid. 801(d)(1)(C) without further inquiry into its reliability. See United States v. Maldonado-Rivera, 922 F.2d 934, 973 (2d Cir. 1990).

The fairness of a photo array depends on a number of factors, including its size, content and the manner in which it was presented. See id. at 974. "If there is nothing inherently prejudicial about the presentation, such as use of a very small number of photographs or of suggestive comments, the principal question is whether the picture of the accused, matching descriptions given by the witness, so stood out from all of the other photographs as to suggest to any identifying witness that [the person] was more likely to be the culprit." Id. (quoting Jarrett v. Headley, 802 F.2d at 41); see also United States v. Fernandez, 456 F.2d 638, 641-42 (2d Cir. 1972) (noting that an eleven-photo array with only two persons matching the suspect's

characteristics would not be impermissibly suggestive).

Here, the size of the array was not unduly small as to cause undue focus on Cox. There is no evidence that the manner it was presented to the Troopers was suggestive or otherwise flawed. The array consisted of eight African-American men of the approximate same age and with similar facial characteristics. All eight men in the array had close-cropped hair, receding hairlines, and moustaches. All eight photographs were full frontal shots. There was nothing in Cox's picture that made him stand out. No suggestive comments were made to the Troopers before or during the identification process. Moreover, the process was not tainted by McAdory's receipt of Cox's picture from the Milford police and his retention of the picture in his case file. None of the Troopers saw the picture, and none of them even knew that McAdory had received it or that a suspect had been identified. None of the Troopers had access to McAdory's case file or to his desk. It is clear that McAdory's receipt and retention of the single picture of Cox did not taint or compromise in any way the Trooper's identification of Cox from the photo array.

Because the identification process at issue was not unnecessarily suggestive, tainted, or inherently prejudicial, it is admissible at trial without further inquiry into the reliability of the identification.

CONCLUSION

For the foregoing reasons, Jason Cox's motion to suppress identification evidence [doc. # 82] is DENIED.

SO ORDERED this            day of January, 2001 at Bridgeport,  
Connecticut.

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Alan H. Nevas  
United States District Judge